IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

SEAN EDGE,

Plaintiff,

v.

DR. IVEY,

Defendant.

OPINION AND ORDER

11-cv-832-slc

In this Eighth Amendment medical treatment lawsuit brought pursuant to 42 U.S.C. § 1983, plaintiff Sean Edge claims that while he was held in the Dane County Jail, defendant Dr. E. Rackley Ivey acted with deliberate indifference to Edge's serious medical needs when he ended Edge's prescriptions for two psychotropic medications without first tapering the dosages.

Before the court is Dr. Ivey's motion for summary judgment. Dkt. 16. Having considered the parties' submissions, I conclude that the facts that are actually material are not genuinely disputed and that Dr. Ivey is entitled to judgment as a matter of law. Therefore, I am granting Dr. Ivey's motion and dismissing Edge's lawsuit.

Before making findings of fact, I must resolve a procedural dispute: Dr. Ivey objects to Edge's responses to Dr. Ivey's proposed findings of fact on the ground that Edge has failed to cite evidence that supports them. The requirement to provide evidentiary support for a factual assertion or response is set forth in the *Procedure To Be Followed On Motions For Summary Judgment* which was attached to the Preliminary Pretrial Conference Order that this court mailed to Edge a year ago, on April 19, 2012. *See* dkt. 12 at 16-18. Edge *did* file an unsworn affidavit in response to Dr. Ivey's motion but he fails to cite to this affidavit and the affidavit does not contain all of the same information as Edge's statements in response to Dr. Ivey's proposed findings of fact.

Dr. Ivey's objection is well-founded, but the outcome of his summary judgment motion does not change even if the court considers Edge's unsworn affidavit and statements in response to Ivey's proposed findings of fact. Accordingly, to the extent that Edge's submissions discuss matters within his personal knowledge,[1] I have overlooked his procedural errors and considered the documents in deciding whether there are genuine issues of material fact in dispute.

I also note that Edge has failed to propose any findings of fact of his own. Although this strategy is permitted by this court's *Procedure to be Followed on Motions for Summary Judgment*, *see id.* at 18, Sec. II. B. (responding party "may" propose its own findings of fact), the *Procedure* instructs that

> [w]hen a responding party disputes a proposed finding of fact, the response must be limited to those facts necessary to raise a dispute. The court will disregard any new facts that are not directly responsive to the proposed fact. If a responding party believes that more facts are necessary to tell its story, it should include them in its own proposed facts, as discussed in II.B.

Id. at 19, II.D.4. The *Procedure* further advises that "[t]he court will not consider facts contained only in a brief." *Id*. at 17, I.B.4. The reason for these rules is to ensure that the other side has fair notice of the facts the non-movant deems significant and to permit it to respond to those facts, just as the non-movant is permitted to do in response to the movant's proposed findings. Here, Edge appears to want the court to consider additional facts beyond those proposed in his response because his affidavit includes a discussion of matters that go well beyond the facts proposed by defendants. In accordance with the *Procedure*, I have included in my findings of fact

[1] For example, the court has *not* considered Edge's statements about what he was told by one of his treating physicians for the truth of the matters stated therein because such statements constitute inadmissible hearsay.

only those facts proposed by Edge that are directly responsive to a fact proposed by Dr. Ivey and to which Dr. Ivey has had an opportunity to respond. *See Hunt-Golliday v. Metropolitan Water Reclamation Dist.*, 104 F.3d 1004, 1010 n. 2 (7th Cir. 1997) (stating that federal courts are not obliged to scour the record looking for factual disputes).

For the purpose of deciding the motions for summary judgment, I find from the parties' submissions that the facts set out below are material and undisputed:

FACTS

I. The Parties

Between November 2009 and January 2010, plaintiff Sean Edge was booked into the Dane County Jail (DCJ) as an inmate. During Edge's incarceration, defendant Dr. E. Rackley Ivey worked at DCJ on Mondays and Fridays as a part-time contract psychiatrist through the company Correct Care Solutions. Dr. Ivey has been a practicing physician since 1997. His medical specialty is psychiatry, with an emphasis on addiction medicine.

II. Medical Care at Jail

When a DCJ inmate requests health care, members of the jail's Health Services Unit (HSU) and mental health staff arrange and schedule inmate appointments with a physician. At the time of Edge's incarceration, DCJ had a formulary of medications that were available to be prescribed for inmates. Dr. Ivey was not authorized to and did not control what medications were available on this formulary and he did not make policies for Dane County or for DCJ.

Physicians regularly review and interpret notes and records by other physicians and health care providers and rely on the contents of those records to inform medical decision-making.

When Edge was booked into the jail in November 2009, he was prescribed low doses of Seroquel 50 mg that he took as needed for sleep, Geodon 40 mg that he took in the morning and Lithium 600 mg twice daily for mood stability.[2] Based on Dr. Ivey's training and experience, he knew that Edge's dose amounts for Seroquel and Geodon were at a sub-therapeutic level to treat a mood disorder. According to Dr. Ivey, Edge's medication history appeared at the time to be more related to significant substance abuse issues than to mental illness or a primary mood disorder.[3] Dr. Ivey had access to Edge's prior jail records and was aware that in April 2009, Edge had been booked into DCJ because he had attempted suicide, overdosed on Seroquel and required observation for cocaine withdrawal.[4]

On November 20, 2009, Dr. Ivey conducted an initial evaluation of Edge.[5] Dr. Ivey had access to and was aware of the medication orders from Edge's previous incarceration at the jail in April 2009. These orders showed that Edge's Seroquel was discontinued (without a crossover

---

[2] Edge disputes Dr. Ivey's belief that Edge was taking Geodon to calm agitated or aggressive behavior. Edge states that he was diagnosed with bipolar disorder but not aggression.

[3] Edge attempts to dispute this opinion by stating that Dr. Ivey only assumed that he was an addict and had no personal knowledge of this fact.

[4] Edge states that he was at the jail for a suicide watch, not an overdose.

[5] Ivey asserts that Edge was irritated, defensive, and evasive, making it difficult to gain information not already in his medical record. Edge denies acting in this manner and states that Ivey did not ask him any questions at all and just removed him from two of his medications.

taper) and that he had been placed on Thorazine.[6] According to Dr. Ivey, there was a jail policy to discontinue non-formulary medications, such as Seroquel, upon incarceration at the jail.[7]

After the initial evaluation on November 20, 2009, Dr. Ivey decided to continue Edge on lithium and offered Edge Thioridazine (also known by the brand name "Mellaril"), which in Dr. Ivey's medical judgment was appropriate, given Edge's history and presentation.[8] Dr. Ivey gave a voice order that Edge was to continue on the Seroquel and Geodon until the Thioridazine was available to Edge. Dr. Ivey also ordered lab work for Edge.

On a physical assessment form dated November 22, 2009, Registered Nurse J. Kurtz reported "unremarkable" findings and that Edge "denie[d] concerns at present." Two days later, on November 24, 2009, Edge agreed to and signed a mental health services plan, which did not indicate that he was suffering physically at that time. Because Edge's lab results showed that his lithium level was sub-therapeutic, Ivey adjusted the dose upward to 900 mg BID ("*bies in die*" means twice a day) to obtain a therapeutic blood level for mood stability. Ivey also ordered follow up lab work to confirm that this increased dose reached a therapeutic level.

Records show that on December 2, 2009, Edge refused to take lithium in the morning and stated that he would take all of his lithium at bedtime. As documented in a December 3, 2009 mental health progress note, Edge expressed a preference to take Trazadone and stated

---

[6] The parties dispute whether Edge suffered any side effects from the medication changes. Ivey avers that there was no indication in the April 2009 records that Edge had suffered any ill effects at that time. Edge states that he took Thorazine only once and then stopped because he had a severe adverse reaction. Because he was released the next day, he immediately started taking Seroquel and Geodon again.

[7] Although Edge denies the existence of any such policy, he has no evidence to support his assertion and does not indicate how he would have personal knowledge of jail policies.

[8] Dr. Ivey states that Thioridazine typically has a more calming effect than Thorazine but Edge denies that this was the case with him.

that Mellaril had caused racing thoughts, a headache, and clenching teeth. Therefore, on December 4, 2009, Ivey discontinued Edge's Thioridazine and ordered him Trazadone to take at bedtime. On December 7, 2009, Edge submitted a mental health request to increase his dose of Trazadone. When the mental health nurse met with Edge the next day to discuss this, Edge reported that the Trazadone was not helping him sleep and it might be because he had built up a tolerance to Seroquel. Edge also stated that he might prefer Remeron.[9]

Four days later, on December 11, 2009, Edge submitted an inmate medical request regarding his "personal meds" and asked whether they were in his property bag. Staff responded to the same day that "Your meds were sent to property the day your Thioridazine came in. You can put a request in to see what is in your property."

Also on December 11, Edge submitted a mental health request indicating "numerous negative side effects" that he attributed to the Trazadone. A social worker met with Edge the next day and addressed Edge's concerns. Edge reported headaches and "eyes burning" but acknowledged that the headaches were tolerable. Edge also thought the side effects could be from "coming off other meds." The social worker provided a sleep chart for plaintiff to complete.[10]

On December 14, 2009, Edge submitted a mental health request stating that "Trazadone is causing problems - I slept two hours last night - Please for the love of God Help Me." In response to Edge's request, both a social worker and the mental health nurse responded to him.

---

[9] Edge states that he also complained that the Trazadone was not helping and may be making things worse.

[10] Dr. Ivey states that these records demonstrate that Edge had not requested any pain medication to deal with the side effects. Edge states that he requested pain medication but was told to purchase it from the canteen according to jail policy.

The nurse noted that Edge would be "placed on doc review." On December 18, 2009, Edge submitted a mental health request to switch from Trazadone to Remeron, stating that he was "struggling very badly and can't any longer." In response to the request, a social worker met with Edge on December 21, 2009. The mental health progress note from that day states that Edge reported that the Trazadone was not effective and that he "is now refusing it." A December 30, 2009 note indicates that Edge was refusing to take all psychotropic medication. [11]

On January 11, 2010, Dr. Ivey followed-up with Edge and wrote a progress note stating that Edge "[w]ould like low dose Trazadone for anxiety. Will add 25 mg." Dr. Ivey also discontinued Edge's lithium order. Dr. Ivey noted that Edge could follow-up as needed.[12] On January 12, 2010, Edge submitted a mental health request asking that his Trazadone prescription be discontinued. Both a social worker and the mental health nurse met with Edge in response.[13] On January 15, 2010, Dr. Ivey discontinued the Trazadone order.

DCJ policy provided that insomnia was not a problem to be treated with medication because it was considered a medical issue, not psychiatric issue unless it was secondary to a mental illness under treatment. Dr. Ivey avers that Edge would have been required to undertake behavioral and sleep hygiene methods (such as sleep logs) prior to being seen for insomnia. Even though Dr. Ivey was not treating Edge for insomnia, he knew that insomnia can be ameliorated by the use of Trazadone, which has a sedating effect. According to Dr. Ivey, individuals often

---

[11] Edge clarifies that he never refused Geodon or Seroquel.

[12] Although Dr. Ivey also noted that Edge told him that he had stopped all prescriptions a month ago, Edge avers that he stopped the medications that Dr. Ivey had prescribed sometime in January 2010.

[13] The parties dispute whether Edge reported to the social worker that "things have been going well," that he denied any concerns or that he stated that he had been sleeping well and no longer needed a sleep aid.

experience sleep problems early in their withdrawal from chronic drug or alcohol use. Once a person passes this withdrawal stage, he often sleeps better without medication. In November and December 2009, it was Dr. Ivey's medical judgment that Edge's complaints of sleep problems were not necessarily related to the change in his psychiatric medications. According to a progress note from Edge's January 12, 2010 appointment, Edge stated that he needed no medication for sleep.[14]

In Dr. Ivey's medical opinion, discontinuing the low doses of Geodon and Seroquel that Edge had been taking would not be expected to cause any physical symptoms of withdrawal, even without the replacement medication Edge was prescribed. Withdrawal symptoms would have been most apparent soon after the medication change.[15]

III. Dr. Schramm Expert Opinion

Dr. Ivey retained Dr. Richard Schramm, a psychiatrist at Dean Health System in Madison, Wisconsin, to review Edge's jail and other medical records to offer an opinion about Edge's mental health condition and Ivey's management of Edge's medications. Dr. Schramm has been a board-certified psychiatrist since 1994 and is a fellow of the American Psychiatric

---

[14] Dr. Ivey opines that Edge progressed through this sleep disruption pattern typical of early withdrawal. Edge denies experiencing withdrawal symptoms, stating that he had been sober for nine months at that point. Edge points out that he did complain of insomnia after being booked until Ivey switched his medications a month later.

[15] The parties generally dispute whether Edge reported any side effects from the change in his medication. Dr. Ivey avers that the medical records do not reflect any report by Edge of physical distress after his medication changed, and the mental health progress note from November 24, 2009 states that Edge had "only frustration" at the change and describes Edge as "den[ying] MH [mental health] current symptoms." Edge responds that he complained daily about mental and physical distress. He points out that he would not have complained of side effects as of November 24, 2009 because his medications only changed on December 3.

Association. Throughout his career, Dr. Schramm has provided medication management for mental illness and has developed a thorough working knowledge and clinical acumen regarding the standard of care for psychiatric medication management including: prescribing medication, changing medication and monitoring response and side effects to medication intervention.

It is Dr. Schramm's opinion that Dr. Ivey met the standard of care with regard to Edge's psychiatric medication management:

> Psychotropic medication management for Mr. Edge is challenging given his struggles with sociopathy, substance dependence, medication noncompliance and refusal, and frequent requests for medication changes and adjustments in the context of ongoing frequent episodes of psychosocial stress.
>
> There is no evidence in the record to suggest any lasting significant medical harm coming to Mr. Edge as a result of the psychotropic medication management conducted by Dr. Ivey.
>
> * * *
>
> The transition from Geodon and Seroquel to Mellaril [generic name: Thioridazine] at these relatively low doses would not require taper and titration.
>
> Schramm Report, dkt. 21 at 2-3.

ANALYSIS

I. Summary Judgment Standard

Summary judgment is proper where there is no showing of a genuine issue of material fact in the pleadings, depositions, answers to interrogatories, admissions and affidavits, and where the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). "'A genuine issue of material fact arises only if sufficient evidence favoring the nonmoving party exists to permit a jury to return a verdict for that party.'" *Sides v. City of Champaign*, 496 F.3d 820, 826 (7th Cir. 2007) (quoting *Brummett v. Sinclair Broadcast Group, Inc.*, 414 F.3d 686, 692 (7th Cir.

2005)). In determining whether a genuine issue of material facts exists, the court must construe all facts in favor of the nonmoving party. *Squibb v. Memorial Medical Center*, 497 F.3d 775, 780 (7th Cir. 2007). Even so, the nonmoving party must "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Rather, he must come forward with enough evidence on each of the elements of his claim to show that a reasonable jury could find in his favor. *Borello v. Allison*, 446 F.3d 742, 748 (7th Cir. 2006); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-24 (1986).

II. Eighth Amendment

Reading Edge's submissions in the light most favorable to him, Edge seems to be complaining that Dr. Ivey violated his constitutional rights by not allowing Edge to retrieve and use his personal supply of Geodon and Seroquel while jailed, choosing instead to switch Edge to Thioridazine, which caused Edge to suffer withdrawal symptoms and other side effects for which he did not receive treatment.

To survive Dr. Ivey's motion for summary judgment, Edge must present evidence supporting the conclusion that he had an "objectively serious medical need" and that Dr. Ivey was aware of this serious medical need but was "deliberately indifferent" to it. *King v. Kramer*, 680 F.3d 1013, 1018 (7th Cir. 2012) (citing *Estelle v. Gamble*, 429 U.S. 97, 104-05 (1976)). Dr. Ivey assumes that Edge had a serious medical need but contends that he was not deliberately indifferent to it.

A plaintiff proves deliberate indifference by establishing that a jail employee knows of a substantial risk of harm to an inmate and "either acts or fails to act in disregard of that risk." *Gomez v. Randle*, 680 F.3d 859, 865 (7th Cir. 2012) (citing *Arnett v. Webster*, 658 F.3d 742, 751 (7th Cir. 2011)). When the defendant is a medical professional who has treated the plaintiff, the question is whether that treatment was constitutionally adequate. *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008). To prove that it was not, a plaintiff must show that the treatment was "so far afield of accepted professional standards as to raise the inference that it was not actually based on a medical judgment." *Arnett*, 658 F.3d at 751 (quoting *Duckworth v. Ahmad*, 532 F.3d 675, 679 (7th Cir. 2008)). Allegations of medical malpractice or negligence—even "gross negligence"—are insufficient to meet the deliberate indifference standard. *Farmer v. Brennan*, 511 U.S. 825, 836 (1994). Mere disagreement with a doctor's medical judgment is not enough to prove deliberate indifference in violation of the Eighth Amendment. *Berry v. Peterman,* 604 F.3d 435, 441 (7th Cir. 2010) (citing *Estelle*, 429 U.S. at 106)(citation omitted)); *Ciarpaglini v. Saini*, 352 F.3d 328, 331 (7th Cir. 2003).

Edge has submitted no evidence from which a jury reasonably could conclude that Dr. Ivey's decisions concerning Edge's medications and care were blatantly inappropriate or were not based on medical judgment. To the contrary, Dr. Ivey and other medical staff met with Edge on a regular basis to discuss and to evaluate his medications, to respond to his questions and to create a treatment plan for him. Although jail policy prevented Ivey from allowing Edge to continue taking Geodon and Seroquel,[16] Dr. Ivey prescribed other similar medication for Edge,

[16] It is undisputed that Dr. Ivey had no say in the jail policy regarding formulary medications. Edge also has not asserted that the jail policy itself was unconstitutional, nor has he sued anyone responsible for the policy. *See Norfleet v. Webster*, 439 F.3d 392 (7th Cir. 2006) (physician assistant's adherence to prison policy regarding pain relievers cannot support inference of deliberate indifference).

including Thioridazine and then Trazadone, which he believed to be appropriate given Edge's history and presentation.

Edge asserts that Dr. Ivey should have consulted with his treating physician, Dr. Vonk, before discontinuing Edge's Geodon and Seroquel. The law does not require Dr. Ivey to accept every recommendation offered by outside specialists. *Collignon v. Milwaukee County*, 163 F.3d 982, 989 (7th Cir. 1998) ("A plaintiff can show that the professional disregarded the need only if the professional's subjective response was so inadequate that it demonstrated an absence of professional judgment, that is, that no minimally competent professional would have so responded under those circumstances"); *Steele v. Choi*, 82 F.3d 175, 179 (7th Cir. 1996) (under Eighth Amendment analysis, evidence that some medical professionals would have chosen different course of treatment is insufficient to make out constitutional claim). Both Dr. Ivey and Dr. Schramm state that, in their medical opinions, Edge was not taking Geodon and Seroquel in large enough doses to require tapering.

Edge complains that he went days without help for his withdrawal symptoms and the side effects of the new medications. This does not accurately reflect what happened. Although Dr. Ivey did not see Edge personally after each written complaint that he made in December 2009 and January 2010, other staff responded and Dr. Ivey was involved with Edge's care and advised other medical staff how to proceed. Within a day of Edge complaining about side effects from the Thioridazine, Dr. Ivey stopped that medication. Similarly, when the Trazadone allegedly started causing Edge problems in mid-December 2009, staff explored the issue and Dr. Ivey discontinued the medication less than a month later, on January 12, 2010. As defendant points out, some delays in the delivery of health care are inevitable and such delays are even more likely

in a prison environment. *Berry*, 604 F.3d at 442 (citing *Knight v. Wiseman*, 590 F.3d 458, 466 (11th Cir. 2009)). Nothing in the record indicates that Dr. Ivey's conduct was so egregious as to rise to the level of deliberate indifference.

Although Edge clearly was–and is–dissatisfied with Dr. Ivey's treatment decisions, Edge has adduced no evidence to show that Dr. Ivey used anything less than proper medical judgment in providing continual care and treatment. Dr. Schramm's review of the record confirms this. Further, even if Dr. Ivey was negligent in managing Edge's medications and their side effects, negligence does not constitute deliberate indifference. *Duckworth*, 532 F.3d at 679. When prison medical personnel continue to pay attention to and to treat a prisoner's complaints, even if the treatment is not up to par, the medical efforts on the prisoner's behalf are enough to overcome any presumption of deliberate indifference. *See Berry*, 604 F.3d at 445 (Manion, J. concurring in part and dissenting in part) (citing *Duckworth*, 532 F.3d 675). Accordingly, Dr. Ivey is entitled to summary judgment on Ivey's claim.

ORDER

IT IS ORDERED that defendant E. Rackley Ivey's motion for summary judgment (dkt. 16) is GRANTED. The clerk of court is directed to close this case and enter judgment for defendant.

Entered this 24th day of April, 2013.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge